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**HOUSE BILL 748**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Jose A. Campos**

**AN ACT**

**RELATING TO ELECTRIC POWER; ENACTING THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AND STORAGE AUTHORITY ACT; CREATING THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AND STORAGE AUTHORITY; PROVIDING, UNDER CERTAIN CIRCUMSTANCES, FOR THE PLANNING, ACQUISITION, MAINTENANCE AND OPERATION OF CERTAIN ELECTRIC TRANSMISSION FACILITIES BY THE AUTHORITY; PROVIDING A GROSS RECEIPTS TAX DEDUCTION FOR CERTAIN RECEIPTS RELATING TO ELECTRIC TRANSMISSION PROJECTS; PROVIDING FOR THE ISSUANCE OF RENEWABLE ENERGY TRANSMISSION BONDS; MAKING AN APPROPRIATION.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 15 of this act may be cited as the "New Mexico Renewable Energy Transmission and Storage Authority Act".**

**Section 2. [NEW MATERIAL] LEGISLATIVE FINDINGS AND**

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1       **PURPOSES. --**

2                   **A. The legislature finds that:**

3                               (1) there are extensive reserves of renewable  
4 energy in New Mexico and additional facilities are needed to  
5 develop and market the reserves;

6                               (2) timely development of New Mexico renewable  
7 energy sources will stabilize and increase revenue to the  
8 state;

9                               (3) new electric transmission infrastructure  
10 and storage will increase development of New Mexico renewable  
11 energy sources and improve the reliability of the transmission  
12 grid;

13                              (4) it is in the public interest to promote  
14 the economic welfare of the state and its residents by  
15 increasing employment, stimulating economic activity,  
16 augmenting sources of tax revenue, fostering economic stability  
17 and improving the balance of the state's economy; and

18                              (5) it is in the public interest to develop  
19 New Mexico's vast sources of clean, renewable energy for in-  
20 state consumption and for exportation to other markets desirous  
21 of clean renewable energy.

22                   **B. The purposes of the New Mexico Renewable Energy**  
23 **Transmission and Storage Authority Act are to:**

24                              (1) diversify and expand the New Mexico  
25 economy through improvements in the electric transmission

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1 infrastructure and the development of storage technologies;

2 (2) facilitate the transmission and use of New  
3 Mexico renewable energy by planning, acquiring, maintaining and  
4 operating electric transmission facilities, storage and related  
5 supporting infrastructure and interests therein; and

6 (3) provide for the creation of the New Mexico  
7 renewable energy transmission and storage authority to  
8 facilitate the acquisition of existing and new electric  
9 transmission and storage facilities.

10 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
11 New Mexico Renewable Energy Transmission and Storage Authority  
12 Act:

13 A. "acquire" means to obtain eligible facilities by  
14 lease, construction, reconstruction or purchase;

15 B. "authority" means the New Mexico renewable  
16 energy transmission and storage authority;

17 C. "bonds" means renewable energy transmission  
18 bonds and includes notes, warrants, bonds, temporary bonds and  
19 anticipation notes issued by the authority;

20 D. "eligible facilities" means facilities to be  
21 acquired by the authority, in which, within one year after  
22 beginning operation, at least thirty percent of the electric  
23 energy transmitted and stored will, as estimated by the  
24 authority, originate from renewable energy sources;

25 E. "facilities" means electric transmission and

1 interconnected electricity storage facilities and all related  
2 structures, properties and supporting infrastructure, including  
3 any interests therein;

4 F. "project" means an undertaking by the authority  
5 to plan, acquire, maintain and operate eligible facilities  
6 located in part or in whole within the state of New Mexico;

7 G. "public utility" means a public electric utility  
8 regulated by the public regulation commission pursuant to the  
9 Public Utility Act and municipal utilities exempt from public  
10 regulation commission regulation pursuant to Section 62-6-4  
11 NMSA 1978 that own or operate facilities;

12 H. "renewable energy" means electric energy:

13 (1) generated by use of low- or  
14 zero-emissions generation technology with substantial long-term  
15 production potential; and

16 (2) generated by use of renewable energy  
17 resources that may include:

18 (a) solar, wind, hydropower and  
19 geothermal resources;

20 (b) fuel cells that are not fossil  
21 fueled; and

22 (c) biomass resources, such as  
23 agriculture or animal waste, small diameter timber, salt cedar  
24 and other phreatophyte or woody vegetation removed from river  
25 basins or watersheds in New Mexico, landfill gas and

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1 anaerobically digested waste biomass; but

2 (3) does not include electric energy  
3 generated by use of fossil fuel or nuclear energy; and

4 I. "storage" means energy storage technologies that  
5 convert, store and return electricity to help alleviate  
6 disparities between electricity supply and demand.

7 Section 4. [NEW MATERIAL] NEW MEXICO RENEWABLE ENERGY  
8 TRANSMISSION AND STORAGE AUTHORITY CREATED-- ORGANIZATION. --

9 A. There is created the "New Mexico renewable  
10 energy transmission and storage authority", a public body  
11 politic and corporate, separate and apart from the state,  
12 constituting a governmental instrumentality for the performance  
13 of essential public functions.

14 B. The authority shall be composed of five members  
15 appointed by the governor with the advice and consent of the  
16 senate; provided that no more than three members shall be of  
17 the same political party. The members of the initial authority  
18 shall be appointed for staggered terms, two members for terms  
19 of one year each and the other members for terms of two, three  
20 and four years, respectively, as designated at the time of  
21 appointment. Thereafter, all members shall be appointed for  
22 four-year terms. A majority of persons appointed and serving  
23 as members shall have:

24 (1) special knowledge of the public utility  
25 industry, as evidenced by college degrees or by experience, at

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1 least five years of which must be with the public utility  
2 industry;

3 (2) knowledge of renewable energy development;  
4 and

5 (3) a displayed ability to protect the public  
6 interest.

7 C. In addition to the appointed members, the  
8 secretary of energy, minerals and natural resources shall serve  
9 as an ex-officio nonvoting member of the authority.

10 D. The governor shall designate an appointed member  
11 of the authority to serve as chair, and the authority may elect  
12 annually such other officers as it deems necessary.

13 E. Meetings of the authority shall be held at the  
14 call of the chair or whenever three members shall so request in  
15 writing. A majority of members then serving constitutes a  
16 quorum for the transaction of any business. The affirmative  
17 vote of at least a majority of a quorum present shall be  
18 necessary for any action to be taken by the authority. No  
19 vacancy in the membership of the authority shall impair the  
20 right of a quorum to exercise all rights and perform all duties  
21 of the authority.

22 F. The authority is not created or organized and  
23 its operations shall not be conducted for the purpose of making  
24 a profit, but it is expected to recover the costs of operating  
25 the authority. No part of the revenues or assets of the

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1 authority shall benefit or be distributable to its members,  
2 officers or other private persons. The members of the  
3 authority shall receive no compensation for their services but  
4 shall be reimbursed for actual and necessary expenses at the  
5 same rate and on the same basis as provided for public officers  
6 in the Per Diem and Mileage Act.

7 G. The authority shall not be subject to the  
8 supervision or control of any other board, bureau, department  
9 or agency of the state except as specifically provided in the  
10 New Mexico Renewable Energy Transmission and Storage Authority  
11 Act. No use of the terms "state agency" or "instrumentality"  
12 in any other law of the state shall be deemed to refer to the  
13 authority unless the authority is specifically referred to in  
14 the law.

15 H. The authority is a governmental instrumentality  
16 for purposes of the Tort Claims Act.

17 Section 5. [NEW MATERIAL] AUTHORITY--DUTIES AND POWERS.--

18 A. The authority shall:

19 (1) do any and all things necessary or proper  
20 to accomplish the purposes of the New Mexico Renewable Energy  
21 Transmission and Storage Authority Act;

22 (2) hire an executive director and such other  
23 employees or other agents as it deems necessary for the  
24 performance of its powers and duties, including consultants,  
25 financial advisors and legal advisors, and prescribe the powers

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1 and duties and fix the compensation of the employees and  
2 agents. The executive director of the authority shall direct  
3 the affairs and business of the authority, subject to the  
4 policies, control and direction of the authority; and

5 (3) maintain such records and accounts of  
6 revenues and expenditures as required by the state auditor.

7 The state auditor or the state auditor's designee shall conduct  
8 an annual financial and legal compliance audit of the accounts  
9 of the authority and file copies with the governor and the  
10 legislature.

11 B. The authority may:

12 (1) make and execute agreements, contracts and  
13 other instruments necessary or convenient in the exercise of  
14 its powers and functions with any person or governmental  
15 agency;

16 (2) enter into contractual agreements with  
17 respect to one or more projects upon the terms and conditions  
18 the authority considers advisable;

19 (3) utilize the services of executive  
20 departments of the state upon mutually agreeable terms and  
21 conditions;

22 (4) enter into partnerships with public or  
23 private entities;

24 (5) establish corridors for the transmission  
25 of electricity within the state and investigate, plan,

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1 prioritize and negotiate with entities within and outside the  
2 state;

3 (6) pursuant to Subsection C of this section,  
4 plan, acquire, maintain and operate eligible facilities  
5 necessary or useful for the accomplishment of the purposes of  
6 the New Mexico Renewable Energy Transmission and Storage  
7 Authority Act;

8 (7) pursuant to the provisions of the Eminent  
9 Domain Code, exercise the power of eminent domain for acquiring  
10 property or rights of way for public use if needed for  
11 projects;

12 (8) receive by gift, grant, donation or  
13 otherwise, any sum of money, aid or assistance from the United  
14 States, the state of New Mexico, any other state, any political  
15 subdivision or any other public or private entity;

16 (9) for any project, provide information and  
17 training to employees of the project regarding any unique  
18 hazards that may be posed by the project, as well as training  
19 in safety work practices and emergency procedures;

20 (10) issue bonds pursuant to the New Mexico  
21 Renewable Energy Transmission and Storage Authority Act as  
22 necessary to undertake a project;

23 (11) enter into contracts necessary for the  
24 planning, acquisition, maintenance or operation of eligible  
25 facilities;

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1 (12) enter into contracts for the lease and  
2 operation by the authority of eligible facilities owned by a  
3 public utility or other private person;

4 (13) enter into contracts for leasing eligible  
5 facilities owned by the authority, provided that any revenue  
6 derived pursuant to the lease shall be deposited in the  
7 renewable energy transmission bonding fund;

8 (14) set rates for public utilities and other  
9 persons using eligible facilities owned by the authority,  
10 provided that any revenue derived from rates paid to the  
11 authority shall be deposited in the renewable energy  
12 transmission bonding fund; and

13 (15) adopt such reasonable administrative,  
14 regulatory and procedural rules as may be necessary or  
15 appropriate to carry out its powers and duties.

16 C. Except as provided in this subsection, the  
17 authority shall not enter into any project if public utilities  
18 or other private persons are performing the acts, are  
19 constructing or have constructed the facilities, or are  
20 providing the services contemplated by the authority, and are  
21 willing to finance and own new infrastructure to meet an  
22 identified need and market. Before entering into a project,  
23 the following procedures shall be implemented:

24 (1) the authority shall provide to each public  
25 utility and publish one time in a newspaper of general

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1 circulation in New Mexico and one time in a newspaper in the  
2 area where the eligible facilities are contemplated and on a  
3 publicly accessible web page maintained by the authority, an  
4 initial notice describing the project that the authority is  
5 contemplating, including a detailed description of the existing  
6 or anticipated renewable energy sources that justify the  
7 determination by the authority that the project facilities are  
8 eligible facilities. The description shall contain, at a  
9 minimum, the names of all persons that already are or will  
10 develop the renewable energy sources, all persons that will own  
11 the renewable energy sources and the peak output capacity,  
12 source type, location and anticipated connection date of the  
13 renewable energy sources;

14 (2) any person with an interest that may be  
15 affected by the proposed project shall have thirty days from  
16 the date of the last publication of the initial notice to  
17 challenge, in writing, the determination by the authority that  
18 the facilities are eligible facilities. If a challenge is  
19 received by the authority within the thirty days, the authority  
20 shall hold a public hearing after a minimum of two weeks notice  
21 in the same newspapers and web page in which the initial notice  
22 was given. Following the public hearing, the authority shall  
23 make a final determination of eligibility and give notice of  
24 the determination pursuant to Section 39-3-1.1 NMSA 1978. Any  
25 person or governmental entity participating in the hearing may

1 appeal the final determination by filing a notice of appeal  
2 with the district court pursuant to Section 39-3-1.1 NMSA 1978;

3 (3) public utilities and other private persons  
4 willing and able to finance, acquire and operate the eligible  
5 facilities described in the notice shall have thirty days from  
6 the date of the final notice to notify the authority of  
7 intention and ability to finance, acquire and operate the  
8 eligible facilities described in the notice; and

9 (4) in the absence of notification by a public  
10 utility or other private person, or if a person, having given  
11 notice of intention to finance and construct the eligible  
12 facilities contemplated by the authority, fails to make a good  
13 faith effort to commence the same within twelve months from the  
14 date of notification by the authority of its intention, the  
15 authority may proceed to plan, acquire and operate the eligible  
16 facilities originally contemplated.

17 D. In soliciting and entering into contracts for  
18 the transmission or storage of electricity, the authority and  
19 any person leasing or operating eligible facilities acquired by  
20 the authority shall, if practical, give priority to those  
21 contracts that will transmit or store electricity to be sold  
22 and consumed in New Mexico.

23 E. The authority and any eligible facilities  
24 acquired by the authority shall not be subject to the  
25 supervision, regulation, control or jurisdiction of the public

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1 regulation commission; provided that nothing in this subsection  
2 shall be interpreted to allow a public utility to include the  
3 cost of using eligible facilities in its rate base without the  
4 approval of the public regulation commission.

5 Section 6. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION  
6 BONDS-- APPROPRIATION OF PROCEEDS. --

7 A. The authority is authorized to issue and sell  
8 revenue bonds, known as "renewable energy transmission bonds",  
9 payable solely from the renewable energy transmission bonding  
10 fund, in compliance with the New Mexico Renewable Energy  
11 Transmission and Storage Authority Act, for the purpose of  
12 entering into a project when the authority determines that the  
13 project is needed.

14 B. The net proceeds from the bonds are appropriated  
15 to the authority for the purpose of planning and acquiring  
16 eligible facilities.

17 Section 7. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION  
18 BONDING FUND CREATED-- MONEY IN THE FUND PLEDGED. --

19 A. The "renewable energy transmission bonding fund"  
20 is created in the state treasury. The fund shall consist of  
21 revenues received by the authority from operating or leasing  
22 eligible facilities. Earnings of the fund shall be credited to  
23 the fund. Balances in the fund at the end of any fiscal year  
24 shall remain in the fund, except as provided in this section.

25 B. Money in the renewable energy transmission

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1 bonding fund is pledged for the payment of principal and  
2 interest on all bonds issued pursuant to the New Mexico  
3 Renewable Energy Transmission and Storage Authority Act. Money  
4 in the fund is appropriated to the authority for the purpose of  
5 paying debt service, including redemption premiums, on the  
6 bonds and the expenses incurred in the issuance, payment and  
7 administration of the bonds.

8 C. On the last day of January and the last day of  
9 July of each year, the authority shall estimate the amount  
10 needed to make debt service and other payments during the next  
11 twelve months from the renewable energy transmission bonding  
12 fund on the bonds plus the amount that may be needed for any  
13 required reserves. The authority shall transfer to the  
14 renewable energy transmission and storage authority operational  
15 fund any balance in the renewable energy transmission bonding  
16 fund above the estimated amounts.

17 D. Bonds issued pursuant to the New Mexico  
18 Renewable Energy Transmission and Storage Authority Act shall  
19 be payable solely from the renewable energy transmission  
20 bonding fund or, with the approval of the bondholders, such  
21 other special funds as may be provided by law and do not create  
22 an obligation or indebtedness of the state within the meaning  
23 of any constitutional provision. No breach of any contractual  
24 obligation incurred pursuant to that act shall impose a  
25 pecuniary liability or a charge upon the general credit or

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1 taxing power of the state, and the bonds are not general  
2 obligations for which the state's full faith and credit is  
3 pledged.

4 E. The state does hereby pledge that the renewable  
5 energy transmission bonding fund shall be used only for the  
6 purposes specified in this section and pledged first to pay the  
7 debt service on the bonds issued pursuant to the New Mexico  
8 Renewable Energy Transmission and Storage Authority Act. The  
9 state further pledges that any law requiring the deposit of  
10 revenues in the renewable energy transmission bonding fund or  
11 authorizing expenditures from the fund shall not be amended or  
12 repealed or otherwise modified so as to impair the bonds to  
13 which the renewable energy transmission bonding fund is  
14 dedicated as provided in this section.

15 Section 8. [NEW MATERIAL] AUTHORITY TO REFUND BONDS.--The  
16 authority may issue and sell at public or private sale bonds to  
17 refund outstanding renewable energy transmission bonds by  
18 exchange, immediate or prospective redemption, cancellation or  
19 escrow, including the escrow of debt service funds accumulated  
20 for payment of outstanding bonds, or any combination thereof,  
21 when, in its opinion, such action will be beneficial to the  
22 state.

23 Section 9. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION  
24 BONDS-- FORM - EXECUTION. --

25 A. The authority, except as otherwise specifically

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1 provided in the New Mexico Renewable Energy Transmission and  
2 Storage Authority Act, shall determine at its discretion the  
3 terms, covenants and conditions of the bonds, including, but  
4 not limited to, date of issue, denominations, maturities, rate  
5 or rates of interest, call features, call premiums,  
6 registration, refundability and other covenants covering the  
7 general and technical aspects of the issuance of the bonds.

8 B. The bonds shall be in such form as the authority  
9 may determine, and successive issues shall be identified by  
10 alphabetical, numerical or other proper series designation.

11 C. Bonds shall be signed and attested by the  
12 executive director of the authority and shall be executed with  
13 the facsimile signature of the chair of the authority and the  
14 facsimile seal of the authority, except for bonds issued in  
15 book entry or similar form without the delivery of physical  
16 securities. Any interest coupons attached to the bonds shall  
17 bear the facsimile signature of the executive director of the  
18 authority, which officer, by the execution of the bonds, shall  
19 adopt as his own signature the facsimile thereof appearing on  
20 the coupons. Except for bonds issued in book entry or similar  
21 form without the delivery of physical securities, the Uniform  
22 Facsimile Signature of Public Officials Act shall apply, and  
23 the authority shall determine the manual signature to be  
24 affixed on the bonds.

25 Section 10. [NEW MATERIAL] PROCEDURE FOR SALE OF

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1 RENEWABLE ENERGY TRANSMISSION BONDS. --

2 A. Bonds shall be sold by the authority at such  
3 times and in such manner as the authority may elect, either at  
4 private sale for a negotiated price or to the highest bidder at  
5 public sale for cash at not less than par and accrued interest.

6 B. In connection with any public sale of the bonds,  
7 the authority shall publish a notice of the time and place of  
8 sale in a newspaper of general circulation in the state and  
9 also in a recognized financial journal outside the state. The  
10 publication shall be made once each week for two consecutive  
11 weeks prior to the date fixed for such sale, the last  
12 publication to be two business days prior to the date of sale.  
13 The notice shall specify the amount, denomination, maturity and  
14 description of the bonds to be offered for sale and the place,  
15 day and hour at which sealed bids therefor shall be received.  
16 All bids, except those of the state, shall be accompanied by a  
17 deposit of two percent of the principal amount of the bonds.  
18 Deposits of unsuccessful bidders shall be returned upon  
19 rejection of the bid. At the time and place specified in such  
20 notice, the authority shall open the bids in public and shall  
21 award the bonds, or any part thereof, to the bidder or bidders  
22 offering the best price. The authority may reject any or all  
23 bids and readvertise.

24 C. The authority may sell a bond issue, or any part  
25 thereof, to the state or to one or more investment bankers or

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1 institutional investors at private sale.

2 Section 11. [NEW MATERIAL] NEW MEXICO RENEWABLE ENERGY  
3 TRANSMISSION AND STORAGE AUTHORITY ACT IS FULL AUTHORITY FOR  
4 ISSUANCE OF BONDS-- BONDS ARE LEGAL INVESTMENTS. --

5 A. The New Mexico Renewable Energy Transmission and  
6 Storage Authority Act shall, without reference to any other act  
7 of the legislature, be full authority for the issuance and sale  
8 of renewable energy transmission bonds, which bonds shall have  
9 all the qualities of investment securities under the Uniform  
10 Commercial Code and shall not be invalid for any irregularity  
11 or defect or be contestable in the hands of bona fide  
12 purchasers or holders thereof for value.

13 B. The bonds are legal investments for any person  
14 or board charged with the investment of any public funds and  
15 are acceptable as security for any deposit of public money.

16 Section 12. [NEW MATERIAL] SUIT MAY BE BROUGHT TO COMPEL  
17 PERFORMANCE OF OFFICERS.--Any holder of bonds or any person or  
18 officer being a party in interest may sue to enforce and compel  
19 the performance of the provisions of the New Mexico Renewable  
20 Energy Transmission and Storage Authority Act.

21 Section 13. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION  
22 BONDS TAX EXEMPT.--All renewable energy transmission bonds  
23 shall be exempt from taxation by the state or any of its  
24 political subdivisions.

25 Section 14. [NEW MATERIAL] RENEWABLE ENERGY TRANSMISSION

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1 AND STORAGE AUTHORITY OPERATIONAL FUND. --The "renewable energy  
2 transmission and storage authority operational fund" is created  
3 in the state treasury. The fund shall consist of money  
4 appropriated and transferred to the fund. Earnings from  
5 investment of the fund shall be credited to the fund. Money in  
6 the fund is appropriated to the authority for the purpose of  
7 carrying out the provisions of the New Mexico Renewable Energy  
8 Transmission and Storage Authority Act. Any unexpended or  
9 unencumbered balance remaining at the end of a fiscal year  
10 shall not revert. Disbursements from the fund shall be made  
11 upon warrants drawn by the secretary of finance and  
12 administration pursuant to vouchers signed by the executive  
13 director of the authority.

14 Section 15. [NEW MATERIAL] REPORT TO LEGISLATURE. --The  
15 authority shall submit a report of its activities to the  
16 governor and to the legislature not later than December 1 of  
17 each year. Each report shall set forth a complete operating  
18 and financial statement covering its operations for the  
19 previous fiscal year.

20 Section 16. A new section of the Gross Receipts and  
21 Compensating Tax Act is enacted to read:

22 "[NEW MATERIAL] DEDUCTION--GROSS RECEIPTS TAX--RECEIPTS  
23 FROM SELLING EQUIPMENT OR CERTAIN SERVICES FOR CERTAIN ELECTRIC  
24 TRANSMISSION FACILITIES. --The receipts from selling equipment  
25 or providing services to the New Mexico renewable energy

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1 transmission and storage authority or an agent or lessee of the  
2 authority for the planning, construction, repair, maintenance  
3 or operation of an electric transmission and storage facility  
4 acquired by the authority pursuant to the New Mexico Renewable  
5 Energy Transmission and Storage Authority Act may be deducted  
6 from gross receipts. "

7 Section 17. APPROPRIATION. --One million dollars  
8 (\$1,000,000) is appropriated from the general fund to the  
9 renewable energy transmission and storage authority operational  
10 fund for expenditure by the New Mexico renewable energy  
11 transmission and storage authority in fiscal year 2006 and  
12 subsequent fiscal years to carry out the purposes of the New  
13 Mexico Renewable Energy Transmission and Storage Authority Act.  
14 Any unexpended or unencumbered balance remaining at the end of  
15 a fiscal year shall not revert; provided, however, that it is  
16 the intent of the legislature that the money appropriated by  
17 this section is to be used for initial implementation and, as  
18 balances accrue to the renewable energy transmission and  
19 storage authority operational fund above the amounts needed by  
20 the authority to perform its duties, the excess balances are to  
21 be deposited in the general fund so that the appropriation made  
22 by this section shall be completely refunded to the general  
23 fund no later than June 30, 2015.

24 Section 18. EFFECTIVE DATE. --The effective date of the  
25 provisions of this act is July 1, 2005.